



City of Seattle

Michael McGinn, Mayor

Department of Planning and Development

Diane M. Sugimura, Director

MEMORANDUM

TO: Councilmember Sally Clark, Chair, COBE
Councilmember Sally Bagshaw
Councilmember Tim Burgess

FROM: Diane M. Sugimura, Director
Karen White, Director of Code Compliance

DATE: March 8, 2010

SUBJECT: March 10 Committee Briefing: DPD Monthly Report, Focusing on Enforcement

During my report last month, you expressed interest in a more in-depth discussion on enforcement issues. Below is a summary of the Code Compliance program; attached is more detailed background information for the discussion. The background covers staffing, a description of the types of violation issues, and information on the outcomes of our work. This is followed by a section on some of the challenges of code enforcement. During last month's report when I mentioned the challenges of gaining expeditious compliance on certain properties, particularly those in foreclosure or bankruptcy, you asked us to consider if more aggressive programs are needed. We followed-up with discussions with Law.

DPD Code Enforcement Program Summary

- The DPD Code Compliance Division responded to over 7500 violation complaints and requests for assistance with City codes in 2009. Complaint volumes in some areas have increased, including overall number of cases handled by Housing and Zoning Inspectors, particularly for Land Use Code violations and vegetation overgrowth issues.
- Development related issues, noise complaints and tenant relocation assistance volumes decreased somewhat as economic activity and development decreased during the current recession.
- The two largest complaint categories are Land Use Code and vegetation overgrowth problems, totaling nearly 3000 complaints last year. Landlord/tenant issues were the next largest group, totaling 2662 complaints. Construction-related issues, including violations of environmentally critical areas regulations, totaled 988 complaints.
- In more recent years, we have successfully used a strategy of using civil nuisance abatement actions to resolve serious junk storage violations when the issuance of multiple citations did not work. Nearly two thirds of these cases are typically brought into



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compliance by the property owner. The City obtains court authorization to clean up the junk in the remaining cases, and then recovers the cleanup costs from the owner.

- Most violations are cured by the responsible party through DPD's administrative enforcement efforts. The time required to resolve violations can be lengthy if permits must be obtained, or if legal action is needed. Only a small proportion of cases (5 - 7 %) require legal action to obtain compliance. The litigation process is relatively opaque to complainants and proceeds deliberately; it can appear as though little or no progress is being made or that no action is being taken.
- The number of violations cases referred for legal action, and cases closed after legal action, has increased over the past six years, as has the amount collected in monetary penalties. Monetary penalty amounts are decided by the judge, not by DPD. The increase reflects a more active and aggressive use of civil penalties actions, including the junk nuisance abatements discussed in the prior paragraph.
- Complaints regarding vacant buildings have remained very steady, and actually decreased slightly in 2009. Although dealing with foreclosures and bankruptcies has increased slightly with the economic downturn, these comprise only a small number of cases—ten at the current time. We will continue watching to see if this number increases further, but at this time we do not believe we have an issue that requires a change in our enforcement approach.
- However, there is an area of change that we have been considering. Amend the standards in the Housing and Building Maintenance Code for vacant buildings to streamline the process required to address both building and premises standards. Currently building issues are handled with a Notice of Violation; premises issues such as rampant vegetation, accumulation of junk or inoperable vehicles, follow a citation process. A single process for a single site would be much more efficient.

Attachment

Background: Organization of the Code Compliance Division

The Code Compliance Division enforces 18 codes and ordinances, including Environmental Critical Areas Ordinance (ECA); Housing and Building Maintenance Code; Just Cause Eviction Ordinance; Seattle Building Code; Seattle Residential Code; Seattle Condominium and Cooperative Conversion Ordinances; Seattle Electrical Code; Seattle Energy Code; Seattle Land Use Code; Seattle Mechanical Code; Seattle Noise Ordinance; Seattle Shoreline Master Plan; Seattle Tenant Relocation Assistance Ordinance; Seattle Tree Protection Ordinance; State Environmental Policy Act (SEPA); Seattle Stormwater Code and Seattle Grading Code.

Housing and Zoning Inspections: This unit includes about 14 FTE inspectors (including 2 senior inspectors and 1 part-time shoreline inspector) and 2 inspector supervisors. Senior inspectors concentrate on unfit buildings and premises, inspections of existing DADUs that have come in for permits, and complex enforcement issues (such as those involving multiple agencies). Examples of common violations include:

- Junk storage in residential zones
- Parking (too many vehicles, where parked)
- Substandard rental housing conditions
- Violations of home occupation requirements
- Vegetation overgrowth into right-of-way from private property
- Shoreline violations
- Vacant buildings not meeting standards
- Illegal dwelling units
- Buildings or premises unfit for human habitation
- Existing uses not allowed in a zone or without proper use permit

Construction Complaint Support: This unit includes two positions which work closely with the construction, site, electrical and other specialty inspectors (e.g. boilers/pressure vessels and conveyances) in the Operations Division. Primary functions include:

- Assisting citizens with construction-related complaints; and
- Managing violation cases involving building, electrical, and site-development issues (e.g. grading, tree cutting or vegetation clearing, side sewer repair or installation).

Property Owner/Tenant Assistance Unit: This unit is composed of one supervisor and 1.5 FTE staff. Primary functions include:

- Enforcing Just Cause Eviction Ordinance for residential tenants;
- Administering and enforcing Tenant Relocation Assistance Ordinance for residential tenants forced to move by development activity; and
- Responding to citizen calls for assistance with landlord/tenant issues. Many of the questions are not about City requirements but are about issues regulated by the Washington State Residential Landlord Tenant Act, such as the return of security and damage deposits, which are beyond DPD's jurisdiction.

Enforcement Facilitation Unit: This unit includes two professional positions, and one clerical. Primary functions include:

- Assisting the Law Department with enforcement litigation by assuring that our case documentation is adequate, preparing declarations, motions, settlement agreements

and other legal documents, negotiating compliance and settlement terms, and assisting at pre-trial settlement hearings and trials.

- Representing DPD before the Hearing Examiner (79 citation hearings in 2009);
- Preparing research and reports related to claims filed against the City;
- Facilitating DPD staff review of state legislative bills; and
- Managing complex public disclosure requests.

Additional staff provide customer service by assisting telephone and walk-in customers with code violation complaints; these staff also research permit history and property ownership (3 positions). General administrative duties (document production, records system maintenance, mail, reception) are provided by two administrative staff. A supervisor supervises these five positions and provides management support.

Overview of Complaints

The Code Compliance program primarily responds to reported violations received from the public and other agencies, such as the Fire and Police. The program is not designed or resourced as a proactive program and therefore we do not seek out violations. We also perform some requested inspections, for a fee, such as inspection of rental housing structures that are to be converted to condominiums (in better economic times), or when a property owner wishes to demolish a residential building in dilapidated condition but is not ready to seek permits for a replacement use.

The table below shows the number of violation complaints received in the past four years by type of problem. While some categories decreased recently along with construction activity and development permit volumes, other categories (e.g. land use, vegetation overgrowth) have remained at higher levels than four years ago.

CODE VIOLATION COMPLAINTS BY PROBLEM TYPE, 2006 - 2009

Problem type	2006	2007	2008	2009	Sum
Construction	1155	1299	1155	988	4597
Noise*	267	264	259	194	984
Housing/zoning	3292	3569	3894	3698	14,453
Housing	531	483	433	462	1909
Unfit building/premises	12	7	5	3	27
Vacant building	261	263	263	250	1037
Vegetation overgrowth	925	950	1496	1219	4590
Land Use/Zoning	1563	1866	1697	1764	6890
Landlord/tenant	3,408	3,225	1,833	2,662	11,128
Tenant Relocation	1,226	1,332	623	699	3,880
HBMC (incl. eviction, emergency orders, illegal unit)	863	942	607	1,077	3,489
Other	1319	951	603	886	3759
TOTAL	8122	8357	7141	7542	31,162

* Noise complaint response is handled in the Operations Division

Overview of the Enforcement Process

When we confirm that a violation exists, we usually issue a warning to the responsible property owner (and sometimes a tenant or business operator) to allow time for voluntary compliance. A significant number of violations are resolved after issuance of a warning. When we have had recent prior violations involving the same property owner, however, our policy is not to issue another warning. If compliance is not achieved within a reasonable time after a warning, we issue either a Notice of Violation or a citation, depending on the relevant code provision.

A Notice of Violation (NOV) is a formal way of setting a time frame for compliance; daily fines start to accrue if compliance is not achieved within that time frame. To collect the fines associated with a NOV, the City initiates a civil lawsuit against the responsible party in Municipal Court. The court process includes a pre-trial settlement conference with the judge. The purpose of the pre-trial settlement discussions is to provide a means to monitor a responsible party's progress in obtaining permits and compliance with the NOV. Many cases are resolved with compliance before a trial is held. If they are not resolved at this phase, a trial is held and the judge determines whether code violations occurred and decides the amount of any monetary penalties. In our experience trials are often continued by the judges who wish to provide additional opportunity for resolution and compliance.

A citation is more like a traffic or parking ticket in that as soon as a citation is issued, a fine is levied for having committed the violation. The party who receives a citation can appeal it to the Hearing Examiner to reduce the fine or to argue that they are not responsible for the violation. Municipal Court judges have the equitable authority to impose other sanctions, such as giving the City the authority to enter the property and abate the violation, typically junk storage, that gave rise to the citation.

Another factor in the resolution of many violations cases is the time, expense and effort to obtain required permits. Many violations can be resolved by obtaining the proper permits and inspections to ensure that a land use, development activity or a structure conforms to code requirements. The permit process can take time, architectural drawings may be needed, a contractor or engineer may need to be hired, or surveys may need to be completed. Permit applications associated with code violation cases do not get priority handling in the permit review process. To do so would be giving an unfair advantage to violators at the expense of people who get their permits first, as is required. Code Compliance Division staff monitor cases involved in the permit process to make sure the responsible party is making progress toward curing the violations.

People who have complained about code violations are sometimes surprised to learn that our primary means of enforcement when we don't get voluntary compliance is the threat of fines, rather than some specific corrective action such as "closing down" a business. Because of the constraints of the legal system, it can take a significant amount of time to resolve some violation cases. Neighbors often are frustrated by what appears to be inaction on the part of the City when they see no tangible improvement as a case is litigated, or as a violator is working on obtaining a permit when the violation can be cured and the use or structure can be made to conform to code requirements. In addition, some violators will clean up or cease a violation in response to a notice, only to repeat the violation a short while later. Repeat violations are relatively common for issues such as illegal dwelling units, parking in required yards at residential properties, vehicle repair in residential zones, and junk storage.

Enforcement Litigation: Legal action is needed for only a small proportion of violation cases, approximately 5 to 7 percent. In most instances we are able to achieve compliance through voluntary action.

In 2009, DPD referred 164 cases for legal action, a 17% increase over 2008. Coincidentally, the same number of cases -164 - were closed in 2009 (most closed were referred in 2008 or earlier years). The table below shows the volume of law referrals and cases closed for the past 6 years.

Summary of DPD Code Enforcement Civil Penalties Cases

Year	# cases referred for legal action	# cases closed after legal action
2004	100	93
2005	83	94
2006	134	137
2007	138	139
2008	140	113
2009	164	164

An overview of monetary penalties and other enforcement-related payments collected in connection with enforcement cases for the past 6 years is below.

Settlements and Other Payments	
2004	\$ 71,807
2005	\$ 82,579
2006	\$137,307
2007	\$173,560
2008	\$130,265
2009	\$253,722

These figures do not include money collected on judgments obtained in court or via the citation process. The Civil Enforcement section of the Law Department collects past court judgments and liens we have obtained through the code enforcement process; typically the amount collected by this means falls somewhere between \$150,000 and \$200,000 a year.

Enforcement Issues and Challenges

Complaint-Based System: There are a number of limitations with a complaint-based program. For instance, different properties with similar conditions may be treated differently if we receive a complaint about one but not another. In addition, we believe that cultural and language barriers or fear of loss of housing prevent some people from reporting problems. Of special concern is the likelihood that serious substandard housing conditions are not reported by tenants who are immigrants, very low income, mentally ill, or otherwise more vulnerable to risk of homelessness, abuse or intimidation.

Lack of Access to Premises: If we are not able to obtain entry to the premises, either from tenants or from the property owner or manager, we are not able to observe or confirm reported

violations. A means of access would be particularly helpful for follow-up when we have reason to believe there may be health or safety risks for the occupants, the neighbors and/or the general public. In the State legislative session this year a bill has been proposed that would provide limited inspection warrant authority (a final bill has not been adopted as of this writing). It is not clear how useful this bill will be.

Citation Abatement Strategies: Under the Land Use Code, there are a handful of types of violations in residential zones that are prosecuted using citations, as opposed to Notices of Violations. These include outdoor storage of junk (including inoperable vehicles), structures in required yards, parking of vehicles, keeping of animals, and home occupations. Unfortunately, some violators fail to cure their violations despite the receipt of two, three or more citations. This occurs most frequently with junk storage violations.

When we issue multiple citations and still cannot obtain compliance, the Land Use Code allows the city to file an action to abate the violation under SMC Chapter 23.91. This type of abatement differs from our unfit building and premises abatements that we perform under SMC Chapter 22.208. The costs for abatements performed under SMC Chapter 22.208 are collected through property tax liens within three years; costs for citation abatements instead are collected through ordinary judgment liens. As a result, these costs require additional legal proceedings to collect the money owed for abating the violation.

In 2006, DPD began to request that the Law Department initiate a civil nuisance abatement action when the responsible party had failed to cure the worst junk storage violations in residential zones despite receiving multiple citations. Since 2006, we have referred 106 of these cases for nuisance abatement; 22 were referred in 2009. Fifty of these cases were closed in 2009; there are currently 17 open. Of the 50 cases closed in 2009, in 62% (31 cases) we were able to get the owner to remove the junk prior to obtaining a court order. In 18 cases, abatement orders were issued allowing the City to remove the offending junk (including inoperable vehicles) and judgments were obtained for unpaid penalties. In this last category, the City seeks reimbursement for those costs first through collection action and then by seeking a judgment for the amount of City funds expended.

This junk storage abatement process does eventually resolve the problem at the property and thereby gives relief to the neighborhood. It is time consuming and costly in upfront costs, staff time and logistics. The cost of these abatements varies depending on the amount and kind of junk that needs to be removed: a few are in the \$500 range; most are in the \$2000 - \$5,000 range; one cost over \$11,000.

Vacant Buildings: Despite the difficult housing market and widely discussed increase in foreclosures and bankruptcies, the complaints DPD receives about vacant buildings has remained very steady, and even dropped slightly in 2009:

Complaints About Vacant Buildings

Year	Q 1	Q 2	Q 3	Q 4	Total
2006	65	66	82	48	261
2007	59	86	80	38	263
2008	71	70	75	47	263
2009	57	72	73	48	250

It is not illegal to have a vacant building; in fact, the courts have affirmed property owners' right to make no use of their property. The maintenance of vacant buildings is regulated by standards in the Housing and Building Maintenance Code. These require a vacant building to be secured from the weather and unauthorized entry, and for particular building elements to be maintained. The standards are intended to preserve buildings for productive future use. Persistent violators' properties are placed on the Vacant Building Monitoring program and inspected quarterly for at least three quarters. The property owner is charged a fee for each quarterly inspection which varies depending on whether violations are observed and the nature of the violations. In addition, the inspector can order a building to be closed to entry and secured by a City crew; the cost of this work is billed to the building owner. Closing an unsecured vacant building does not require a lawsuit. Due to the clear danger to the community posed by unsecured vacant buildings, the department has this authority by City code.

Some vacant buildings are well-maintained and DPD never has reason to know about them. Others become eyesores or safety hazards for the surrounding neighborhood, or become "attractions" for criminal activities or "squatting" by transients. The vacant building inspector encourages owners whose buildings have deteriorated significantly to consider demolition, and makes referrals to staff within DPD who can assist with that process. Sometimes the building itself has no problems but the lot becomes a magnet for dumping or junk storage or the vegetation on the lot grows out of control.

Buildings may be vacant for a variety of reasons: owners may have future plans for renovation or occupation that they cannot currently realize due to market conditions, finances or personal factors such as illness. They may have mental or physical disabilities which prevent them from addressing the problems. Some are hoarders and use the building for storage. Others may be "collectors" of distressed real estate and may be more interested in owning than in maintaining their properties.

Because of the particular mix of owners with vacant buildings, the challenges for dealing with them can be complex. If the owner is physically disabled or financially strapped, the owner may need substantial assistance in order to bring the building into compliance—and DPD as an enforcement agency can only try to enlist family assistance, suggest other community resources or make referrals to accomplish that assistance. In addition, there have been occasions where a court appointed guardian was needed to be able to get code violations cured. Another problem we occasionally encounter is when a property owner cannot be located; this creates a series of "due process" hurdles we must overcome to adequately notify the property owner of code violations and required corrections. After complying with notification requirements, if a violation remains uncorrected we must then initiate legal action to give the City legal authority to abate violations (for instance, to remove dumped/accumulated junk and debris from the yard).

The current economic situation has slightly increased the number of cases involving bankruptcies or foreclosures. We currently have ten such cases, a much smaller number than many other jurisdictions around the country; only two of these involve vacant buildings. When a bankruptcy is filed, litigation is put on hold and the owner's access to his or her own financial resources will be limited. A court-appointed bankruptcy trustee ultimately settles financial and property issues with court oversight. In one bankruptcy some years ago involving several

properties with code violations, the resolution of the bankruptcy also led to resolution of all of the code violation cases associated with the properties. In the case of foreclosure proceedings, the timeline for foreclosure means that it may be difficult for a period of time to identify a person or entity who is responsible for or who can correct the violation and has the assets to remedy the violation.

Possible Enforcement Improvements

Vacant Buildings: Vacant building enforcement can be more complex than other enforcement issues because of the structure of our code. The vacant building standards cover maintenance of the building itself, and violation of these standards is addressed by a Notice of Violation. If the premises also has junk storage or vegetation overgrowth, those violations must be addressed separately with citations. Citations are effective when the inspector is able to interact directly with the violator, on site, and persuade them to come into compliance. Citations are less effective with owners of vacant building. The dual processes also often means DPD has to issue both a NOV and one or more citations for a single property. A code change to add maintenance of premises to the vacant building standards would streamline our enforcement efforts, reducing time needed to address overgrown yards, inoperable vehicles and accumulations of other junk and debris.